



South Orange County Wastewater Authority

SAN DIEGO REGIONAL  
WATER QUALITY  
CONTROL BOARD

2008 SEP 17 P 1:30

September 17, 2008

Mr. Mark Alpert  
Sr. Water Resource Control Engineer  
Regional Water Quality Control Board  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4353

Re: Complaint No. R9-2008-0064 for Administrative Civil Liability for  
Mandatory Minimum Penalties Under Water Code Section 13385, Alleged  
Violation of Order No. R9-2006-0054, NPDES No. CA0107417

Dear Mr. Alpert:

Thank you for taking the time to meet with us on September 5, 2008 with regard to the Administrative Civil Liability ("ACL") complaint we received in connection with NPDES No. CA0107417. As we indicated, South Orange County Wastewater Authority ("SOCWA") and South Coast Water District ("SCWD") are interested in settling this matter. In addition, we would also like to enter into a time compliance order with the Regional Board so that we can stop incurring additional penalties. We are in the process of discussing this issue with Brian Kelley. As we indicated in our meeting, we believe our NPDES permit unfairly burdens SCWD's groundwater recovery facility which is neither a POTW nor an industrial discharger.

As we discussed, SCWD designed its groundwater recovery facility ("GRF") in the 2001-2002 timeframe when our NPDES permit allowed sampling at outfall. It took two years to construct the plant beginning in approximately June 2005. In 2006, SOCWA engaged in protracted negotiations with the Regional Board with respect to the NPDES permit and in August 2006, the Regional Board issued the permit, effective October 2006, which required SOCWA's member agencies to sample their effluent at their respective facilities, prior to discharging into the outfall. This mandate directly impacted SCWD as it was about to begin operating the GRF which was designed to discharge directly into the outfall. Groundwater treatment for this location was in a new area of the San Juan Basin, and it was not possible to predict the exact quality of the extracted groundwater until some period of extended pumping of the well, therefore, the District could not predict that the GRF's treatment process would be sufficient to meet the standards set forth in the NPDES permit with the change in the sampling point.

Between June 2007 and February 2008, ECO Resources, Inc. operated the GRF. During this period, the plant was operating only sporadically as adjustments were made

to the operations to address start up issues including the sampling of effluent. In fact, the plant did not begin 24/7 operations until March 5, 2008, and even after that date, the GRF had periods of shut down due to equipment issues. SCWD was aware of exceedances of the permit during the start up period, but it did not know if it was an operational issue or a sampling issue. In December 2007, SCWD concluded that it was an operational issue and its engineers in consultation with TetraTech, its plant designer, began working on a solution. After considering various solutions including settling tanks, adjusting pH, etc., in May 2008, SCWD's engineers developed the solution that we presented in our meeting, i.e., to install a holding tank and divert the discharge to the sewer rather than the outfall.

On or about June 27, 2008, the Regional Board issued ACL Complaint No. R9-2008-0064 which detailed effluent violations of the NPDES permit at the GRF from August 2007 through March 2008. On July 10, 2008, SCWD's Board approved the implementation of the proposed remedy. On or about August 14, 2008, the Regional Board issued ACL Complaint No. R9-2008-0093 which superseded the earlier ACL complaint. On August 27, 2008, SCWD entered into a contract with Pascall & Ludwig ("Pascall") to implement the proposed remedy and Pascall has begun the work. We anticipate that it will take eight weeks to complete the work plan.

As we indicated in our meeting, we would propose to settle the ACL complaint with the Regional Board. We suggest the following approach. The GRF was in start up mode from when it began operations in June 2007 until it began to operate 24/7 on March 5, 2008. Although the mandatory minimum penalty statute (Water Code § 13385) provides immunity during the startup of a wastewater treatment plant, the statute is silent with respect to groundwater recovery facilities. Moreover, unlike wastewater treatment plants and POTWs where the treatment technology is well established, groundwater recovery facilities are not supported by established technology. Each groundwater recovery facility deals with different issues caused by the variance in hydrology of each site. As such, it is not unusual for this type of facility to have a long start up period during which adjustments must be made to address operational issues.

Additionally, the continuing operation of the GRF has generated additional effluent violations up to July, 2008, and a list of the additional sampling violations is attached hereto. If calculated for imposition of minimum penalties in the same manner as the existing ACL Complaint, these violations would total an additional \$84,000. As a mitigating factor, we note that the GRF sampling is required by the NPDES permit only once per month, nevertheless from the period of construction through today the plant has been sampled much more extensively in order to provide the information necessary to the correction process. Each sample event has then generated the potential for additional fines.

We propose that the Regional Board assess SCWD the mandatory minimum penalties for the violations that occurred from March 5, 2008 (the date the GRF became fully operational) through July 10, 2008 (the date SCWD's Board approved implementation of the remedy). By our calculation, the total amount of this penalty is

00-000000-44-00

SJC00 Permit Order No. R9-2006-0054

Agency	Violation Date	Constituent	Effluent Limit Violation	Units	Permit Limit	Reported Value	Type of Violation	Fine
SCWD-GRF	4/29/2008	Turbidity	Average Monthly	NTU	75	280.8	8th Serious	3,000
SCWD-GRF	4/29/2008	Settleable Solids	Instantaneous	ml/L	3.0	10.4	9th Serious	3,000
SCWD-GRF	4/30/2008	Settleable Solids	Weekly Average	ml/L	1.5	10.4	10th Serious	3,000
SCWD-GRF	4/30/2008	Settleable Solids	Monthly Average	ml/L	1.0	10.4	11th Serious	3,000
SCWD-GRF	4/30/2008	Turbidity	Weekly Average	NTU	100.0	280.8	12th Serious	3,000
SCWD-GRF	5/3/2008	Turbidity	Instantaneous	NTU	225.0	249.0	No	3,000
SCWD-GRF	5/10/2008	Turbidity	Weekly Average	NTU	100.0	249.0	Yes	3,000
SCWD-GRF	5/16/2008	Turbidity	Instantaneous	NTU	225.0	372.0	Yes	3,000
SCWD-GRF	5/17/2008	Turbidity	Weekly Average	NTU	100.0	372.0	Yes	3,000
SCWD-GRF	5/17/2008	Settleable Solids	Weekly Average	ml/L	1.5	1.6	No	3,000
SCWD-GRF	5/29/2008	Turbidity	Instantaneous	NTU	225.0	330.0	Yes	3,000
SCWD-GRF	5/29/2008	Settleable Solids	Instantaneous	ml/L	3.0	11.7	Yes	3,000
SCWD-GRF	5/29/2008	Settleable Solids	Weekly Average	ml/L	1.5	11.7	Yes	3,000
SCWD-GRF	5/31/2008	Settleable Solids	Monthly Average	ml/L	1.0	4.5	Yes	3,000
SCWD-GRF	5/31/2008	Settleable Solids	Weekly Average	NTU	100.0	330.0	Yes	3,000
SCWD-GRF	5/31/2008	Turbidity	Average Monthly	NTU	75.0	317.0	Yes	3,000
SCWD-GRF	5/31/2008	Total Suspended Solids	Average Monthly	mg/L	60.0	131.7	Yes	3,000
SCWD-GRF	6/6/2008	Turbidity	Instantaneous	NTU	225.0	381.0	Yes	3,000
SCWD-GRF	6/12/2008	Turbidity	Weekly Average	NTU	100.0	381.0	Yes	3,000
SCWD-GRF	6/30/2008	Turbidity	Monthly Average	NTU	75.0	381.0	Yes	3,000
SCWD-GRF	6/30/2008	Total Suspended Solids	Monthly Average	mg/L	60.0	135.0	Yes	3,000
SCWD-GRF	7/31/2008	Total Suspended Solids	Average Monthly	mg/L	60.0	131.0	Yes	3,000
SCWD-GRF	7/31/2008	Turbidity	Instantaneous	NTU	225.0	314.0	Yes	3,000
SCWD-GRF	7/31/2008	Turbidity	Weekly Average	NTU	100.0	314.0	Yes	3,000
SCWD-GRF	7/31/2008	Turbidity	Monthly Average	NTU	75.0	314.0	Yes	3,000
SCWD-GRF	7/31/2008	Settleable Solids	Instantaneous	ml/L	3.0	4.9	Yes	3,000
SCWD-GRF	7/31/2008	Settleable Solids	Weekly Average	ml/L	1.5	4.9	Yes	3,000
SCWD-GRF	7/31/2008	Settleable Solids	Monthly Average	ml/L	1.0	4.9	Yes	3,000

A serious violation occurs when the reported value for these constituents is 40 % or more than the discharge limit. Fines can be assessed for all serious violations and all minor violations after the fourth violation within any 180 da

Total \$ 84,000